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Citation for final published version:

Evans, Adam ORCID: <https://orcid.org/0000-0003-4150-1517> 2019. Inter-parliamentary relations in the United Kingdom: devolution's undiscovered country? *Parliaments, Estates and Representation* 39 (1), pp. 98-112. 10.1080/02606755.2018.1487648 file

Publishers page: <http://dx.doi.org/10.1080/02606755.2018.1487648>  
<<http://dx.doi.org/10.1080/02606755.2018.1487648>>

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# **Inter-parliamentary relations in the UK: devolution's undiscovered country?<sup>1</sup>**

Adam Evans

Wales Governance Centre, Cardiff University, Wales

## **Summary**

Since 1997, the United Kingdom's territorial constitution has undergone an immense process of change and has resulted in the establishment of separate legislatures and governments for the peoples of Scotland, Wales and, when Stormont is operational, Northern Ireland. These changes have spawned a whole series of relationships between the institutions of the devolved UK, at executive, legislature and civil service levels. However, while intergovernmental relations has been the subject of repeated debate, there has been little attempt to document and examine the way in which the UK's four legislatures interact with one another, post-devolution. To the extent that these interactions, otherwise known as inter-parliamentary relations (IPR), have been the subject of scrutiny it has been largely to bemoan their modest state and/or to suggest that stronger, albeit occasionally rather unelaborated, mechanisms be established. This article seeks to correct this deficit and provide a first step towards a clearer understanding of IPR in the UK, post-devolution. The article breaks the different levels of IPR down into three main strands: 1) parliament-parliament, 2) committee-committee, and 3) official-official and suggests that the main interactions that take place at each of these levels. Following this audit, the article concludes by highlighting the role that shared policy competence (a field that is set to grow with the UK's withdrawal from the European Union) has played in driving IPR in the UK, post-devolution and suggests some steps that may be taken to enhance IPR in the future.

## **Introduction**

Since 1997, the UK's territorial constitution has undergone an immense process of change. Where once the UK was confidently, but erroneously, described as a 'Unitary state' with a single legislature (with the notable exception of Northern Ireland from 1921-72) sharing a single, common legislature and government, devolution has resulted in the establishment of

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<sup>1</sup> The author would like to thank an anonymous reviewer as well as Professor Nicola McEwen, Professor Richard Wyn Jones and Dr Henry Midgley for their helpful comments and suggestions.

separate legislatures and governments for the peoples of Scotland, Wales and, when Stormont is operational, Northern Ireland.<sup>2</sup> These changes have spawned a whole series of relationships between the institutions of the devolved UK: at intergovernmental, interparliamentary and inter/intra civil service<sup>3</sup> levels.

Intergovernmental relations (IGR), for example, have been the subject of repeated debate and criticism, both by official reports and by academics specialising in this field and there is now a sizeable literature that has developed in this area.<sup>4</sup> However, to date, aside from occasional academic reports and references in the academic literature, little attempt has been made to document the way in which the UK's four legislatures interact with one another, post-devolution.

To the extent that these interactions, otherwise known as inter-parliamentary relations (IPR), have been the subject of scrutiny it has been largely to bemoan their modest state (the Public Administration and Constitutional Affairs Committee in its 2017 report on inter-institutional relations in the UK, for example, described IPR as 'arguably the poorer and less well-developed relative of IGR') and/or to suggest that stronger, albeit occasionally rather unelaborated, mechanisms be established.<sup>5</sup>

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<sup>2</sup> V. Bogdanor, *The New British Constitution*, (Oxford, 2009), pp.89-119; J. Mitchell, *Devolution in the UK*, (Manchester, 2009), pp.3-15

<sup>3</sup> While Northern Ireland has a distinct civil service, officials in the Scottish and Welsh Governments are technically part of the British Civil Service.

<sup>4</sup> See, for example: W. Swenden and N. McEwen, 'UK devolution in the shadow of hierarchy? Intergovernmental relations and party politics', *Comparative European Politics* 12 (4-5) (2014), pp.488-509; J. Gallagher, 'Intergovernmental relations in the UK: Cooperation, competition and constitutional change', *British Journal of Politics and International Relations* 14 (2) (2012), pp.198-213; J. Hunt and R. Minto, 'Between intergovernmental relations and paradiplomacy: Wales and the Brexit of the regions', *British Journal of Politics and International Relations* 19(4) (2017), pp.647-662; House of Lords Select Committee on the Constitution, *Inter-Governmental relations in the United Kingdom*, 11th Report of Session 2014-2015 (2015), HL paper 146; Public Administration and Constitutional Affairs Committee, *The Future of the Union, part two: Inter-institutional relations in the UK*, Sixth Report of Session 2016-17 (2017), HC 839

<sup>5</sup> See, for example: L. McAllister, 'Immature relationships in the new multi-level United Kingdom: perspectives from Wales', *Public Money & Management* 35 (1) (2015), 31-38; S. Tierney, 'Federalism in a Unitary State: a Paradox too Far?', *Regional and Federal Studies* 19 (2) (2009), pp.237-253; Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 79; Commission on Devolution in Scotland, *Serving Scotland Better: Scotland and the United Kingdom in the 21<sup>st</sup> Century*, Final Report, (June 2009), p.12; The Smith Commission, *The Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, (27 November 2014), p. 14; House of Commons Justice Committee, *Devolution: a decade on*, Fifth Report of Session 2008-09 (2009), HC 529-I, paras. 121-124; Bingham Centre for the Rule of Law, *A Constitutional Crossroads: Ways Forward for the United Kingdom*, (2015), p.9

This article, drawn from the author's experience working as an official in the House of Commons, seeks to enhance our understanding of IPR in the UK, post-devolution. Breaking the different levels of IPR down into three main strands: 1) parliament-parliament, 2) committee-committee, and 3) official-official, this article provides an assessment of the current level of IPR in the UK and suggests that IPR activities can be seen as falling onto a spectrum ranging from formal IPR to more informal interactions. This article contends that many of the examples of IPR in the UK fall somewhere near the centre of this spectrum and can be classified as semi-formal IPR. This article concludes by highlighting the role that shared policy competence (a field that is set to grow with the UK's withdrawal from the EU) has played in driving IPR in the UK, post-devolution. Finally, this article suggests some steps that may be taken to enhance IPR in the future.

### **Perspectives on inter-parliamentary relations in the United Kingdom**

Inter-parliamentary relations represent one of the component parts of a broader network of inter-institutional relations within multi-level political systems. IPR's cousin, intergovernmental relations (IGR) has generally attracted more attention and interest, with IPR, according to Winetrobe, 'often regarded as some sort of minor sub-set' of IGR – a state of affairs that may have arisen from the perception that 'as governments generally dominate parliaments [...], parliamentary relations can be subsumed in the wider idea of governmental relations'.<sup>6</sup>

While IPR may complement and overlap with work undertaken at IGR level, it is nonetheless a distinct model of inter-institutional relations and one with a long lineage. As Bolleyer explains, IPR 'can be bilateral, regional, national and inter-national' in nature and can vary widely in the respective formality or informality of such exchanges.<sup>7</sup> The reasons for undertaking IPR are also varied and can range from a desire for knowledge exchange to take place to a political imperative for parliaments to cooperate as a counterweight to executive-executive engagement at IGR level.

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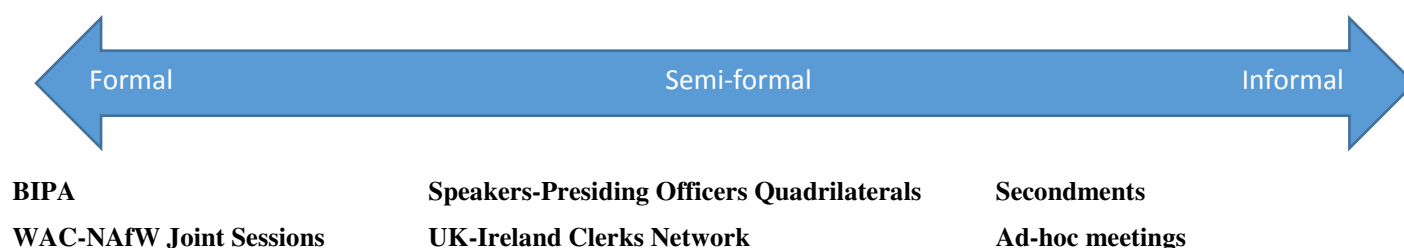
<sup>6</sup> B. Winetrobe, 'Inter-Parliamentary Relations in a Devolved UK: an Initial Overview', in, House of Lords Select Committee on the Constitution, *Devolution: Inter-institutional relations in the United Kingdom*, Second Report of Session 2002-03 (2002), HL Paper 28, p.60

<sup>7</sup> N. Bolleyer, 'Why Legislatures Organise: Inter-Parliamentary Activism in Federal Systems and its Consequences', *The Journal of Legislative Studies*, 16 (4) (2010), pp.411-437

In the UK, IPR has attracted relatively little attention in the academic literature. References are few and far between and can often feel like a bolt-on to more general discussions of IGR.<sup>8</sup> Nonetheless, there does appear to be a strong sense, amongst those who have recently commented on this subject, that IPR is underdeveloped and should be enhanced.<sup>9</sup> Such sentiments stand in contrast to Winetrobe's assessment in 2002 that the early years of devolution had resulted witnessed an 'organic and pragmatic development' of IPR that had been 'generally successful and productive'.<sup>10</sup>

This therefore raises the question of what actually is the state of inter-parliamentary relations in the UK? Are they as underdeveloped and in need of reform as has been hinted by some of the academic literature and in the comments of parliamentary select committee reports or is IPR in the UK more developed and successful than is commonly appreciated. The next section of this article seeks to address this question and breaks down the different dimensions of IPR activity into different levels: 1) parliament-parliament, 2) committee-committee and 3) official-official. As this article will demonstrate, IPR activity across these levels can be seen as falling across a formal-informal spectrum, with a considerable amount of IPR activity being semi-formal in nature. The diagram below outlines some examples of IPR activities and where they fall on this spectrum.

**Figure 1: Examples of the spectrum of IPR activity in the UK**



<sup>8</sup> House of Lords Constitution Committee, *Inter-governmental relations in the United Kingdom*, 11<sup>th</sup> Report of Session 2014-15 (2015), HL Paper 146; Tierney, 'Federalism in a Unitary State', p.250

<sup>9</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, paras. 83-88.

<sup>10</sup> Winetrobe, 'Inter-Parliamentary Relations in a Devolved UK', pp.68-69

## The current state of inter-parliamentary relations in the United Kingdom

### Parliament-parliament level

#### *British-Irish Parliamentary Assembly*

While IGR in the UK, post-devolution has, as its formal face, the Joint Ministerial Council, there is no such body for IPR and the closest one comes to such a beast is the British-Irish Parliamentary Assembly (BIPA).<sup>11</sup> First established in 1990 as the British-Irish Parliamentary Body, BIPA is rooted in the peace process and the longstanding attempts to re-establish devolution, on a power-sharing model, in Northern Ireland and indeed the principal of such a body received support from the UK and Irish Governments when the Anglo-Irish Agreement was signed in 1985.<sup>12</sup> Initially consisting of 50 Members, 25 from each parliament, New Labour's devolution programme and the Good Friday Agreement, saw the body expanded, in 2001, to include representatives from the legislatures of the member jurisdictions of the British-Irish Council (UK, the Republic of Ireland, the devolved governments of Scotland, Northern Ireland and Wales and the Crown Dependencies of Guernsey, Jersey and the Isle of Man).<sup>13</sup> In 2008, the body was renamed the British-Irish Parliamentary Assembly.

BIPA, as with other inter-parliamentary assemblies such as the NATO Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe, meets in plenary and committee formats. BIPA meets in plenary mode twice a year with responsibility for hosting the sessions alternating between Ireland (which normally hosts the spring session) and the UK (which generally hosts the autumn sessions). At these sessions it is customary for a minister from the host government to address BIPA, 'outlining government priorities relevant to the work of the body' and answer questions from members, these sessions also include debates on and consideration of the reports produced by BIPA's committees.<sup>14</sup>

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<sup>11</sup> A point highlighted by the House of Commons Justice Committee in its 2009 report, *Devolution: a decade on* (paras. 121 and 124)

<sup>12</sup> J. Coakley, 'British Irish Institutional Structures: Towards a New Relationship', *Irish Political Studies*, 29 (1) (2014), pp.76-97

<sup>13</sup> There are five members from each of the devolved legislatures and one each from the legislatures of the three Crown Dependencies.

<sup>14</sup> Coakley, 'British Irish Institutional Structures', p.84

BIPA currently boasts four committees which undertake the more ‘day to day’ work of the assembly: committee A – sovereign matters; committee B – European affairs; committee C – economic; committee D – (environment and social). Aside from committee A, whose membership is restricted to members from the two ‘sovereign parliaments’, the committees draw on members from across the assembly.

BIPA has no legislative role and is a purely advisory body. Seen by some as perhaps ‘worthy but dull’ (as Coakley explains, ‘early assessments of the British Irish Parliamentary body judged it to be a useful but unexciting initiative’), BIPA’s main functions are informational (as seen in the Q and A sessions with government ministers in its plenary format or in the work of its committees); socialisational – the assembly’s declared mission ‘is to promote co-operation between political representatives in Britain and Ireland for the benefit of the people they represent’; and, anchored as it is in the peace process, symbolic.<sup>15</sup> As will be discussed later in this article, BIPA also plays a role in the bureaucratic-officials level of IPR.

#### *b) The speakers and presiding officers quadrilaterals*

Looking purely at the UK, post-devolution, PACAC has suggested that perhaps the closest we have come to a formal set of IPR arrangements has come at speaker and presiding officer level.<sup>16</sup> In 2002, the first notable attempt was made at initiating a speaker/presiding officer dialogue when the then Speaker of the Northern Ireland Assembly, Lord Alderdice (John Alderdice) organised a conference of the speakers, presiding officers, and clerks of the UK, Ireland, the Isle of Man and the Channel Islands. In more recent years, a system of regular meetings between the speakers and presiding Officers of the four UK legislatures has emerged.

These meetings are not strictly formal, in the sense that they are underpinned by resolutions of each chamber (as we shall see, the power of the Welsh Affairs Committee to meet with committees of the National Assembly for Wales can be found in the standing orders of both institutions), have a corporate identity and have fixed meetings. These

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<sup>15</sup> Ibid., p.85

<sup>16</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para.82

meetings take place on a, relatively, regular basis, but are dependent on a mixture of routine and goodwill. At best, they can be described as a semi-formal feature of IPR.

Little is known about the content, agenda and outcomes of these meetings with the level of transparency of the speakers and presiding officers quadrilaterals criticised as ‘unsatisfactory’ in PACAC’s 2017 report. The committee recommended that the speakers and presiding officers ‘consider providing written notice, and written summaries, of these quadrilaterals’. Until such a point, we may have to rely on the evidence of a former Presiding Officer of the National Assembly for Wales, Dame Rosemary Butler, who told PACAC that the quadrilaterals had proven ‘valuable, particularly in providing opportunities for knowledge exchange’.<sup>17</sup>

### **Committee-committee level**

While BIPA and the quadrilaterals demonstrate that there are examples of parliament-parliament IPR, the real engine room of intra-UK IPR, post-devolution, has been at the committee-committee and official-official levels. The importance of the latter was appreciated by Winetrobe in his 2002 survey of IPR (and will be discussed in the next section), however the committee-committee level has been less examined. This is despite the fact that committees have played a valuable, and growing, role in strengthening relations between parliamentarians in the different UK legislatures.

#### *The Welsh Affairs Committee and the National Assembly for Wales*

Arguably the only example of an entrenched platform for IPR comes in the form of the powers granted for the Welsh Affairs Committee (WAC) and committees of the National Assembly for Wales (NAfW) to hold joint evidence sessions - a power that is enshrined in the standing orders of both institutions.<sup>18</sup>

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<sup>17</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 97

<sup>18</sup> See: House of Commons, *Standing Orders – Public Business* (2017), Standing Order No. 137A(3); and the National Assembly for Wales, *Assembly Business: Standing Orders of the National Assembly for Wales* (October 2017), Standing Order No. 17.54. However, unlike the provisions of Standing Order No. 137A(3), the Assembly’s standing order states that “Committees may meet concurrently with any committee or joint committee of any legislature in the UK” (Standing Order No. 17.54).



This power resulted from the peculiarities of the devolution dispensation provided for Wales by the 1998 Government of Wales Act. Unlike the law-making bodies created in Scotland and Northern Ireland, the National Assembly for Wales (NAfW) was created as a body corporate invested with a model of executive devolution that saw most of the functions exercised previously by the Secretary of State for Wales and the Welsh Office transferred to the NAfW. The NAfW was thus empowered with a range of secondary legislative powers in policy fields such as agriculture, education and health, while primary law-making powers in those fields (and others) remained reserved at Westminster.<sup>19</sup> The result was a ‘jagged edge’ of the devolution boundary, and a strong degree of policy and legislative inter-dependency, between Westminster and the NAfW.<sup>20</sup>

By 2003, these dynamics had resulted in increasing frustration at the level of duplication of scrutiny work undertaken by WAC and Committees of the NAfW. This ‘significant overlap of work’ was particularly felt in relation to the draft National Health Service (Wales) Bill, legislation that was the subject of pre-legislative scrutiny by both WAC and the Assembly’s Health and Social Services Committee and prompted WAC to recommend that powers be granted for formal joint meetings to take place between itself and NAfW committees.<sup>21</sup> Following this recommendation, and the government’s response that ‘joint pre-legislative scrutiny by the WAC and the appropriate Committee of NAfW would be helpful’, officials in both institutions established a working group to see how WAC’s proposals could be progressed.<sup>22</sup>

The findings of the joint working group were appended to the Procedure Committee’s 2003 report *Joint Activities with the National Assembly for Wales*, the main proposal being ‘reciprocal enlargement’ that ‘would allow the National Assembly and the Welsh Grand, and Assembly and House of Commons committees, to invite members of the other institution to participate in their debate or evidence sessions. The ‘host’ institution would continue to apply

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<sup>19</sup> R. Rawlings, *Delineating Wales: Constitutional, Legal and Administrative Aspects of National Devolution*, (Cardiff, 2003), pp.5-6

<sup>20</sup> R. Wyn Jones and R. Scully, *Wales Says Yes: Devolution and the 2011 Welsh Referendum*, (Cardiff, 2011), pp.39-56; Rawlings, *Delineating Wales*, pp.62-70

<sup>21</sup> Procedure Committee, *Joint Activities with the National Assembly for Wales*, Third Report of Session 2003-04 (2004), HC 582, para. 2

<sup>22</sup> Welsh Affairs Committee, *The Government Response to the Fourth Report of the Committee: The Primary Legislative Process as it affects Wales*, Third Special Report of Session 2002-03 (2003), HC 989; Welsh Affairs Committee, *The Primary Legislative Process as it affects Wales*, Fourth Report of Session 2002-03 (2003), HC 79, paras. 39-41

its standard practices and procedures, subject to any small adjustments to reflect enlargement'.<sup>23</sup> In turn, the Procedure Committee proposed that:

- a) Until the end of the current parliament, the Welsh Affairs Committee should be authorised to invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote), subject to a quorum of both committees being present;
- b) During such proceedings, use of the Welsh language should be allowed in all circumstances, with the National Assembly providing interpreters and transcription of Welsh language contributions.<sup>24</sup>

On 28 May 2004, a little after a fortnight after the publication of the Procedure Committee's response, the Welsh Affairs Committee and the Economic Development and Transport Committee of the National Assembly for Wales published a joint press notice announcing that that they intended, subject to the approval of both legislatures, to hold joint meetings as part of their pre-legislative scrutiny of the draft Transport (Wales) Bill.<sup>25</sup> Approval was forthcoming in Parliament and the National Assembly on 7 June and 15 June 2004 respectively and the two Committees met jointly in the National Assembly on 21 June and in Westminster on 23 and 24 June 2004.<sup>26</sup>

In its report on the draft bill, the Welsh Affairs Committee praised the 'reciprocal enlargement' experiment, describing the meetings between the two committees as demonstrating 'an innovative and progressive approach to pre-legislative scrutiny' that enabled the committees to avoid "the unnecessary duplication of evidence that marked scrutiny of previous "Wales-only" draft Bills'.<sup>27</sup>

On the back of this successful experiment, the House of Commons, on 15 July 2005, voted to amend its Standing Orders so that joint working could be a permanent tool at the disposal of

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<sup>23</sup> Procedure Committee, *Joint Activities with the National Assembly for Wales*, para.9

<sup>24</sup> *Ibid.*, para. 12

<sup>25</sup> Welsh Affairs Committee and Economic Development and Transport Committee, *Joint Press Notice: Pre-legislative scrutiny, the draft Transport (Wales) Bill* [online] (28 May 2004), <http://www.parliament.uk/business/committees/committees-archive/welsh-affairs-committee/welsh-affairs-and-economic-development-and-transport-committees-press-notice-n0-1-03-04/> (accessed online: 10/01/2018)

<sup>26</sup> Welsh Affairs Committee, *Draft Transport (Wales) Bill*, Fourth Report of Session 2003-04 (2004), HC 759, paras. 5-6

<sup>27</sup> *Ibid.*, para. 8

the Welsh Affairs Committee and the committees of the National Assembly for Wales.<sup>28</sup> Enshrining the concept of ‘reciprocal enlargement’, the standing orders state that: ‘the Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote)’.<sup>29</sup>

Since then, the Welsh Affairs Committee has used its formal powers to meet jointly with a Committee of the National Assembly on a number of occasions. The most recent of this feature was a joint evidence session in Cardiff with the Assembly’s Constitutional and Legislative Affairs Committee on 9 November 2015 as part of their respective pre-legislative scrutiny of the draft Wales Bill.<sup>30</sup> Joint sessions have, when they have taken place, been positively regarded (at least by WAC) and while the number of joint sessions has been in the single digits, there would likely have been greater scope for such meetings had it not been for the handling of the LCO-referral process.<sup>31</sup>

As a result of the issues caused by a process that often saw LCOs ‘referred to Assembly committees for scrutiny months before they arrived in Parliament’, and the with the exception of a joint evidence session held with the Assembly’s Proposed Domiciliary Care Legislative Competence Order (LCO) Committee, on 17 January 2007, IPR between the WAC and NAFW was dominated by informal collaboration.<sup>32</sup> Such informal collaboration proved to be arguably more extensive in scope than the more formal and public IPR offered by joint sessions. As the WAC explained in its 2010 report, *Review of the LCO Process*, in each of the draft LCOs that were scrutinised by the committee in that parliamentary session, ‘our Chairman has held an informal meeting with the Chair of the Assembly Committee, either in person or via video-link, and in some cases we have held informal joint meetings open to all the members of both committees’.<sup>33</sup>

### *The Scottish Affairs Committee and the Scottish Parliament*

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<sup>28</sup> House of Commons, *The Journals of the House of Commons*, Volume 262 (11 May 2005 – 8 November 2006), p.127

<sup>29</sup> House of Commons, *Standing Orders: Public Business*, Standing Order No. 137A(3)

<sup>30</sup> Welsh Affairs Committee, *Pre-legislative scrutiny of the draft Wales Bill*, First Report of Session 2015-16, HC 449 (2016), para. 11

<sup>31</sup> S. Griffiths and P. Evans, ‘Constitution by Committee? Legislative Competence Orders under the Government of Wales Act (2007-2011)’, *Parliamentary Affairs*, 66 (2013), 495

<sup>32</sup> Welsh Affairs Committee, *Review of the LCO process*, Fifth Report of Session 2009-10 (2010), HC 155, paras. 58-66; Griffiths and Evans, ‘Constitution by Committee?’, p.495

<sup>33</sup> Welsh Affairs Committee, *Review of the LCO process*, para. 63

While the narrow confines of Standing Order 137A (3) may have made sense during the operation of the first two Welsh devolution dispensations (namely the Government of Wales Act 1998 and the provisions of Part 3 Schedule 5 of the Government of Wales Act 2006), when there was a considerable cross-cutting of administrative and legislative responsibility between Westminster and Cardiff Bay, it seems increasingly difficult to defend. In recent years there has been a growing number of concurrent policy fields across the territorial constitution, most notably in Scotland where, as a result of the Scotland Acts 2012 and 2016, the fields of fiscal and welfare policies are now shared between the UK and Scottish Governments. As PACAC noted in its 2017 report that recommended expanding the provisions of Standing Order 137A (3) to all committees of the House, ‘it makes little sense, given the increasing number of concurrent responsibilities, for 137A (3) to continue to be limited to the Welsh Affairs Committee’.<sup>34</sup>

To demonstrate this point, in March 2017 the Scottish Affairs Committee (SAC) and the Scottish Parliament’s Social Security Committee (SSC) held two ‘joint meetings’, in Holyrood on 13 March and in Westminster on 20 March, examining ‘how the Scottish and UK governments are co-operating to ensure a smooth transition of the newly devolved powers, in particular the effectiveness of the Joint Ministerial Working Group’.<sup>35</sup> In both cases, the standing orders of the respective legislatures meant that a measure of procedural creativity had to be deployed to facilitate joint working.

As a result, the members of the visiting committee in each session were technically listed as witnesses, though in practice the sessions ran on the principle of ‘reciprocal enlargement’.<sup>36</sup> The convenor of the SSC explained this arrangement in her introductory remarks on the 13 March:

This is technically a meeting of the Social Security Committee, but in practice it is a historic joint meeting — it is the very first meeting of our two committees together.

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<sup>34</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 96

<sup>35</sup> Scottish Affairs Committee, ‘Ministers appear before joint sitting of Holyrood and Westminster Committees’ [online] (20 March 2017), <https://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news-parliament-2015/social-security-sos-evidence-16-17/> (accessed 12/01/2018)

<sup>36</sup> See: Scottish Affairs Committee, ‘Oral evidence: Inter-governmental cooperation on social security’ (20 March 2017), HC 1095; Scottish Parliament, ‘Official Report: Social Security Committee’, Session 5 (13 March 2017)

For technical reasons, members of Parliament are listed in the agenda as witnesses, but I will treat MPs and members of the Scottish Parliament equally as members of the committee. I hope that questions from MPs and MSPs flow smoothly.<sup>37 38</sup>

Following these sessions, the two committees agreed to the publication of a joint letter, signed by both Chairs, addressed to the then Secretary of State for Work and Pensions, the Rt Hon Damien Green MP, and the Scottish Government's Cabinet Secretary for Communities, Social Security and Equalities, Angela Constance MSP. The letter, signed by both chairs, effectively acted in lieu of the standard report published by committees at the end of an inquiry, setting out the committees' key findings 'and suggestions for further strengthening inter-governmental relations and the security thereof'.<sup>39</sup>

It is too early to say whether the two 'joint sessions' will become a repeat, albeit for logistical reasons infrequent, fixture of the Scottish Affairs Committee's and Scottish parliament's scrutiny of the new sphere of concurrent policy responsibilities created by the Scotland Act 2016. Nonetheless, it represents the germ of a potentially significant extension of IPR cooperation that could see IPR become a vehicle for scrutiny of IGR at a time when the scale of the latter, already made more significant by the earlier mentioned expansion of concurrent policy responsibilities in recent devolution legislation, will become even more significant as a result of Brexit.

### *The Inter-parliamentary forum on Brexit*

The devolution dispensations were framed in the context of the UK's membership of the European Union and thus by EU regulations, law and common frameworks and policy programmes with the devolution statutes expressly prohibiting the devolved institutions from legislating contrary to EU law.<sup>40</sup> As a result, in a number of policy areas, competencies which are devolved are, in effect, also 'occupied', to varying degrees, by the EU, e.g. in agriculture where the devolved governments have to implement the Common Agricultural Policy.

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<sup>37</sup> Sandra White MSP, in, Scottish Parliament, Official Report: Social Security Committee, Session 5, (13 March 2017), col. 1

<sup>38</sup> Pete Wishart MP and Sandra White MSP, 'Joint Letters to Rt Hon Damien Green MP and Angela Constance MSP (10 April 2017), <https://publications.parliament.uk/pa/cm201617/cmselect/cmsscota/Joint-Letter-to-Rt-Hon-Damian-Green-MP.PDF> / <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmsscota/Joint-Letter-to-Angela-Constance-MSP.PDF>

<sup>40</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 8

As Armstrong has noted, repatriation of policy competencies from the EU back to the UK ‘will also mean that the devolved governments will also acquire new task and responsibilities’.<sup>41</sup> The scope and scale of these new competencies have been the subject of intense debate, not least in light of clause 11 of the EU Withdrawal Bill which, if passed and enacted, would replace the current restriction on devolved institutions to legislate contrary to EU law with a restriction on legislating contrary to ‘retained EU law’.<sup>42</sup> However, it looks likely that at least one of the consequences will be a further increase in the policy fields where responsibility is held concurrently, between the UK government and the devolved administrations, and the creation of a number of common frameworks to regulate these shared policy fields.

In October 2017, the JMC (European Negotiations) agreed the following principles that should underpin any common frameworks:

1. Common frameworks will be established where they are necessary in order to:
  - enable the functioning of the UK internal market, while acknowledging policy divergence;
  - ensure compliance with international obligations;
  - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
  - enable the management of common resources;
  - administer and provide access to justice in cases with a cross-border element;
  - safeguard the security of the UK.
2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
  - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
  - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;

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<sup>41</sup> K. Armstrong, *Brexit Tim: Leaving the EU – Why, How and When?*, (Cambridge, 2017), p.186

<sup>42</sup> See: Public Administration and Constitutional Affairs Committee, *Devolution and Exiting the EU and Clause 11 of the European Union (Withdrawal) Bill: Issues for Consideration*, First Report of Session 2017-19 (2017), HC 484

- lead to a significant increase in decision-making powers for the devolved administrations.
3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.<sup>43</sup>

There are already signs that the UK's legislatures are alert to the need to strengthen IPR in advance of the UK's withdrawal from the EU. In its 2017 report *Brexit: devolution*, the House of Lords European Union Committee recommended that 'the structures for inter-parliamentary dialogue and cooperation be strengthened' both over the short and longer term.<sup>44</sup> With regards to the former, the committee suggested that it would build on the model of its 'well-established mechanisms for collaboration with our colleagues in the devolved legislatures', in particular the ECUK forum (a forum comprising of the chairs of the committees in the four UK legislatures with responsibility for EU affairs and which meets twice a year).<sup>45</sup> As such, the committee indicated that 'working in conjunction with other Committees of the House [...] [it would] propose more regular joint meetings with members of cognate Committees with responsibility for Brexit-related issues in the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and in the House of Commons, for the duration of the Brexit negotiations' – in essence an enlarged ECUK.<sup>46</sup>

As a result of this report, on 12 October 2017 the 'Interparliamentary forum on Brexit' was convened in the House of Lords for its inaugural meeting. Chaired by the Senior Deputy Speaker of the House of Lords, Lord John McFall, the attendees included representatives from committees in both Houses of Parliament, the Scottish parliament and the National Assembly for Wales, while officials were sent from the Northern Ireland

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<sup>43</sup> HM Government, Joint Ministerial Committee (EU Negotiations) Communique 16 October 2017, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652285/Joint\\_Ministerial\\_Committee\\_communique.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/652285/Joint_Ministerial_Committee_communique.pdf) (accessed online: 01/11/2017)

<sup>44</sup> European Union Committee, *Brexit: devolution*, Fourth Report of Session 2017-19 (2017), HL Paper 9, pp. 297-298

<sup>45</sup> *Ibid.*, pp. 289 and 297

<sup>46</sup> With regards to the longer term options for IPR, the Lords European Union Committee contended that "a strengthened forum for interparliamentary dialogue" would be needed within the post-Brexit United Kingdom. However, the Committee acknowledged that the precise form and resourcing of this body, and its relationship with other IPR forums, would be a matter for future consideration (European Union Committee, *Brexit: devolution*, para. 298).

Assembly.<sup>47</sup> According to the joint statement released following the meeting, attendees discussed the work that each of the respective committees and legislatures had been undertaking in their scrutiny of the Brexit process and how best they could ‘work together in the months to come as the Brexit process moves forward’. The attendees also indicated that they would meet again at regular intervals in 2018 ‘to work together as parliamentarians to review the progress of both the negotiations and the parallel domestic legislation’.<sup>48</sup>

### c) Official-official level

So far, this discussion has focused on the political, parliamentary level of IPR in the UK, post-devolution. However, as PACAC identified in its 2017 report on Inter-institutional relations, a significant amount of inter-parliamentary interactions take place between the officials and staff of the four UK legislatures.<sup>49</sup> It is also worth noting that official-official level engagement cuts across parliament-parliament and committee-committee levels of IPR. For example, in the case of BIPA, its secretariat is drawn from staff from both the UK and Irish Parliaments. This not only sees a British and an Irish official sharing the post of joint Clerk of BIPA, but also results in each of BIPAs committees being staffed by a clerk and a shadow clerk drawn from either parliament.<sup>50</sup>

As with other forms of IPR, official-official level IPR can vary considerably between semi-formalised networks which meet annually and where papers are provided and more informal, ad-hoc arrangements. The following are examples of the former model of official-official IPR.

#### *UK, Irish and Islands clerks’ seminar*

Believed to have begun in 2005, this annual seminar brings together clerks from across the four UK legislatures, the Oireachtas and the legislatures of Jersey and the Isle of Man. The

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<sup>47</sup> European Union Committee, ‘Interparliamentary Forum on Brexit holds first meeting’ [online] (13 October 2017), <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-select-committee/news-parliament-2017/first-interparliamentary-brexit-forum/> (accessed online: 15/01/2018)

<sup>48</sup> Ibid.

<sup>49</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 81 and 98

<sup>50</sup> For an example of how BIPA’s staffing situation works in practice, see: British-Irish Parliamentary Assembly, ‘Nineteenth Annual Report’ (February 2015), pp.24, 37



seminar is held in a different territory each year and serves primarily as a socialisational and informational forum, providing an opportunity for clerks ‘to discuss matters of mutual interest, to share best practice and to develop professional networks’.<sup>51</sup> At the most recent seminar, held in Dublin on 28 and 29 September 2017, topics for discussion included the impact of Brexit on the respective legislatures, parliamentary engagement in a digital age and the impact of confidence and supply arrangements on parliaments.<sup>52</sup>

### *Committee Secretariat Network*

A similar body to the UK, Irish and Islands Clerks seminar, the Committee Secretariat Network is an informal network that brings together committee staff from across the UK (including the London Assembly), the Republic of Ireland and the Crown Dependencies. The network meets either once or twice a year, again responsibility for hosting the network rotates among the member bodies. As with the seminar, the network conferences ‘provide an opportunity to discuss matters of mutual interest, to share best practice and to develop professional networks’.<sup>53</sup> At the 2017 CSN meeting in Cardiff, agenda items included youth engagement by parliaments and the role of Public Accounts Committees in the different jurisdictions.<sup>54</sup>

### *The Inter-Parliamentary Research and Information Network (IPRIN)*

IPRIN acts as a forum for parliamentary research and information staff to meet and exchange ideas and information with the aim of developing and enhancing the ‘efficiency, effectiveness and quality of Members’ services’. IPRIN facilitates this interaction through an annual conference, hosted on a rotational basis by the member legislatures, and an online forum. IPRIN’s membership is drawn from the House of Commons Library, the House of Lords Library, the National Assembly for Wales Research Service, the Northern Ireland Assembly

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<sup>51</sup> The agendas and other papers of these meetings are published online on the website of the Tynwald (Tynwald, External activities [online], <http://www.tynwald.org.im/about/extact/Pages/default.aspx> (accessed 16/01/2018))

<sup>52</sup> Agenda: The UK, Irish and Islands Clerks’ Seminar – 28<sup>th</sup> and 29<sup>th</sup> September 2017, <http://www.tynwald.org.im/about/extact/clerksem/Documents/20170928Ag.pdf> (accessed 06/03/18)

<sup>53</sup> Again, the papers of these meetings are published online on the Tynwald website.

<sup>54</sup> Agenda: Committee Secretariat Network Meeting – 2017, <http://www.tynwald.org.im/about/extact/csn/Documents/2017CaAg.pdf> (accessed 06/03/18)

Research and Information Service, the Oireachtas Library and Research Service, the Scottish Parliament Information Centre and the Tynwald Information Service.<sup>55</sup>

In addition to the above listed examples, there are other, less publicised, interactions between officials.<sup>56</sup> The author is aware of engagement at clerks level, replicating that of the speakers and presiding officers quadrilaterals, an informal network of officials from secondary legislation scrutiny committees across the UK and, rather appositely, collaboration between those responsible for public engagement and outreach activities of the four UK legislatures. What these engagements have in common, along with IPR more generally is their informal nature, their reliance on continued goodwill between the actors concerned and, in a number of cases, the sense that such collaboration represents good practice.<sup>57</sup>

### **Conclusions: IPR in the UK – what’s happened and what’s next?**

Inter-parliamentary relations (IPR) has been an oft-overlooked and, generally, understudied aspect of the territorial constitution, post-devolution. To the extent that IPR has been commented on, except for Winetrobe’s more detailed analysis in 2002, it has been to suggest that more should be done and/or that IPR is under-developed, particularly in comparison to intergovernmental relations (IGR). Certainly, IPR does not have the same level of development as IGR when it comes to formal institutions. For example, despite the recommendations of the House of Commons Justice Committee in 2009 and the Strathclyde Commission in 2014, there is no institution that brings together the four UK legislatures in the way that the Joint Ministerial Committee (JMC) does for the four governments.<sup>58</sup> However, as this article has identified IPR in the UK are far more extensive and dynamic than has previously been appreciated. While there may be no intra-UK equivalent of the JMC, representatives from the four UK legislatures meet formally as part of the British-Irish Parliamentary Assembly, while another example of parliament-parliament level cooperation

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<sup>55</sup> See: The Inter-Parliamentary Research and Information Network, <https://iprinblog.wordpress.com/>

<sup>56</sup> See: Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 98

<sup>57</sup> PACAC found in its 2017 report on *Inter-institutional relations in the UK* that there was much goodwill for IPR engagement and that “the principle of closer inter-parliamentary cooperation commands much support”. Although it also noted that there was “no consensus on any particular model of enhanced inter-parliamentary relations” (Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 94).

<sup>58</sup> Scottish Conservatives, *Commission on the Future Governance of Scotland*, (May 2014), p.2; Justice Committee, *Devolution: a decade on*, paras. 121-124.

can be seen in the regular quadrilateral meetings of the speakers and presiding officers of the four legislatures. While not a formal structure like BIPA, the quad can be seen as a semi-formal example of IPR.

Indeed, once one scratches under the surface, one can find a number of examples of semi-formal IPR. This is particularly the case at official-official level. In Winetrobe's 2002 analysis it was clear that the bulk of sustained IPR activity took place between the officials of the four legislatures. Official to official interactions remain an integral component of IPR in the UK, post-devolution and a number of semi-formalised networks exist between clerks, committee staff and the research and information personnel of the UK's parliaments. Alongside these networks, there is also a regular stream and more informal, bilateral engagements at official-official level, whether in the form of secondments or even at the level of clerks or committee staff contacting their counterparts elsewhere in the UK to discuss issues of common interest.

One of the biggest developments in the relative expansion of IPR in recent years has been at the committee-committee level. In 2004, the UK Parliament and the National Assembly for Wales amended their respective Standing Orders to enable the Welsh Affairs Committee (WAC) and committees from the National Assembly to hold joint evidence sessions. This innovation may have only been used a handful of times, the most recent occasion being in 2015, but it has played a useful role in strengthening WAC's relationship with its counterparts in Cardiff Bay. Indeed, it is notable that when logistical barriers inhibited joint working between the WAC and Assembly committees during their respective scrutiny of LCOs, there was nonetheless a sustained programme of extensive, informal consultation and cooperation between WAC and Cardiff Bay.

The value of joint sessions or enhanced cooperation between committees appears to have been recognised beyond the confines of Welsh devolution. In 2017, the Public Administration and Constitutional Affairs Committee (PACAC) called for the Standing Order (SO No. 137A(3)) that enabled WAC to hold joint sessions to be extended to all committees, a recommendation that appeared to be vindicated by the evidence sessions held between Scottish Affairs Committee (SAC) and the Scottish Parliament's Social Security Committee (SSC) to scrutinise the UK and Scottish Government's implementation of the partial devolution of welfare powers provided in the Scotland Act 2016. Thanks to some fleetness

of foot, these evidence sessions were able to effectively function as joint sessions despite neither committee having the formal power to hold such a meeting. Finally, the most recent example of committee-committee IPR has been the establishment of an Interparliamentary Forum on Brexit, bringing together committees from all four Parliaments.

All of these developments in committee-committee IPR have been driven, to varying degrees, by concurrent policy responsibilities. In the case of the WAC and NAFW's committees, cooperation was a response to the complex interdependencies of the Welsh devolution dispensations provided by the Government of Wales Acts 1998 and 2006. The former resulted in a carve-up of responsibilities that saw the NAFW provided with administrative devolution in fields such as education and health and the UK parliament retaining primary legislative powers over those areas, while the latter resulted in a two-stage process to the NAFW gaining primary legislative powers that saw the assembly having to seek legislative competence on a case by case basis from parliament during stage one (2007-2011).

Since then, the Scotland Acts 2012 and 2016 have resulted in significant aspects of taxation and social security policy are shared between the Holyrood and Westminster. As was the case in Wales, this has acted as a catalyst for IPR, hence the two joint evidence sessions between the SAC and SSC. It is likely that the scale and scope of concurrent policy responsibilities will only continue to increase, and significantly so, as a result of the UK's withdrawal from the European Union.

The UK Government has already indicated that it wishes UK common frameworks to be established in a number of policy areas where competencies will be domesticated post-Brexit and, while there is considerable disagreement between the UK government and the devolved administrations as to how these common frameworks should be established and how they should operate, the JMC (EN) agreed a set of principles that should underpin any frameworks at its meeting in October 2017. The legislatures of the UK have also responded, forming the Interparliamentary Forum on Brexit as a vehicle for knowledge exchange, the sharing of best practice, building mutual awareness and considering how future cooperation should best take place as the process of the UK's withdrawal from the EU continues to unfold.

This trend towards ever more inter-connected union, at least policy responsibility wise, looks set to only increase in the future and, if past precedent is anything to go by, it also looks set to remain a driver of IPR between the four UK legislatures. Certainly, while this article has identified that IPR is more diverse and developed than has been previously appreciated, there remains scope for further growth and engagement. Although there are obvious constraints that may limit the opportunities for formalised and more frequent IPR activity, there are clear steps that could be taken to facilitate stronger cooperation. For example, as PACAC noted in its 2017 report, the provisions of standing order 137A(3) could be extended to encompass all committees of the House of Commons and all the devolved legislatures, with corresponding action taken to eliminate procedural barriers to joint action in the respective devolved legislatures. Such steps would facilitate IPR ‘on demand’, enabling more formalised, and transparent, joint working in a way that works for the committees in question.<sup>59</sup>

Other steps could include extending the potential scope for bilateral, informal contacts by providing devolved parliamentarians with UK parliamentary passes and vice-versa. While such a step would not be without its difficulties and could encounter resistance within and beyond Westminster, it is worth recalling that, between 1989 and 2009, UK MEPs were able to have parliamentary passes providing access to certain areas of both the House of Commons and House of Lords (since 2009 this has been limited to the House of Lords).

Finally, the four UK legislatures could do more to enhance the transparency of IPR. IPR, with few exceptions, generally takes place behind closed doors, away from the public gaze and with little attempt to publicise the fact that these exchanges took place, let alone their outcomes. The closed nature of IPR activity in and of itself is understandable and is necessary to building relationships of mutual trust and confidence. However, there is scope for greater openness and transparency. For example, the speakers and presiding officers quadrilaterals are occasionally accompanied by press notices, yet, as PACAC highlighted, the agendas and conclusions of these meetings are shrouded in secrecy. One simple step forward, proposed by the committee, could be for the speakers and presiding officers to provide written notice, and

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<sup>59</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 96

written summaries, of the quadrilateral meetings.<sup>60</sup> IPR in the UK, post-devolution has come a long way since 2002 and particularly over the course of the past decade and while there is much more that could be done to develop these exchanges, the four UK legislatures could do much more to showcase their cooperation.

### **Notes on contributor**

***Dr Adam Evans*** is an Honorary Research Fellow at the Wales Governance Centre at Cardiff University and a Senior Clerk in the House of Commons. He has published widely on aspects of devolution and constitutional history.

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<sup>60</sup> Public Administration and Constitutional Affairs Committee, *Inter-institutional relations in the UK*, para. 97